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Massachusetts State Labor Council

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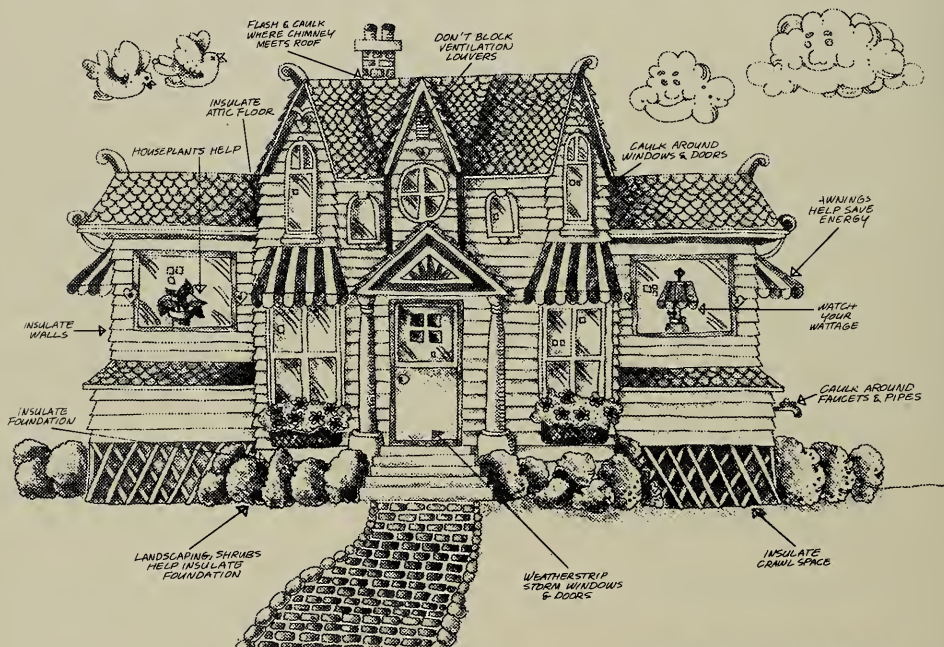
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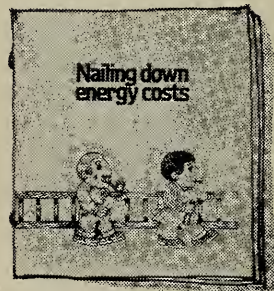
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WILLIAM J. CLEARY

LABOR DAY MESSAGE

By William J.P. Cleary, President
Massachusetts State Labor Council, AFL-CIO

On this Labor Day of 1978 there is no doubt that the working men and women of Massachusetts who have jobs will welcome the opportunity to enjoy a paid holiday with their families or friends, and some may remember that it was the trade unions of the latter part of the nineteenth century that paved the way for this annual holiday and that it was also organized labor that negotiated over the years to make it a paid holiday.

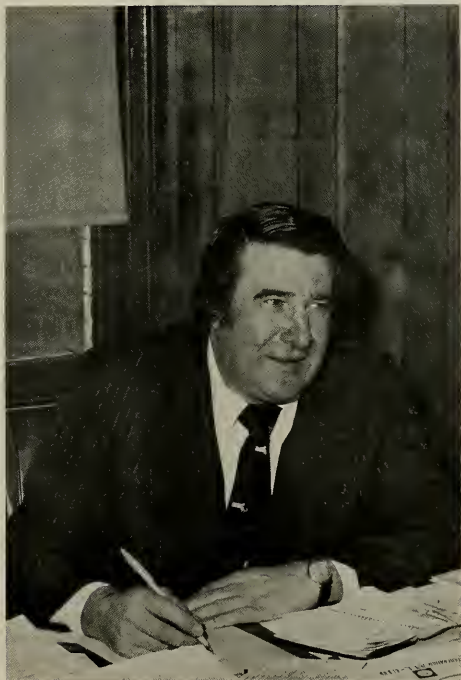
However, for the many thousands who are out of work and cannot find jobs, this Labor Day celebration may have a bitter taste and leave them wondering whether our vaunted civilization is falling apart — or whether the human race is actually unable to cope with industrial progress that is moving at too fast a pace.

In his short inaugural address in January of 1976, President Carter quoted a former high school teacher of his, who had said: "We must adjust to changing times and still hold to unchanging principles."

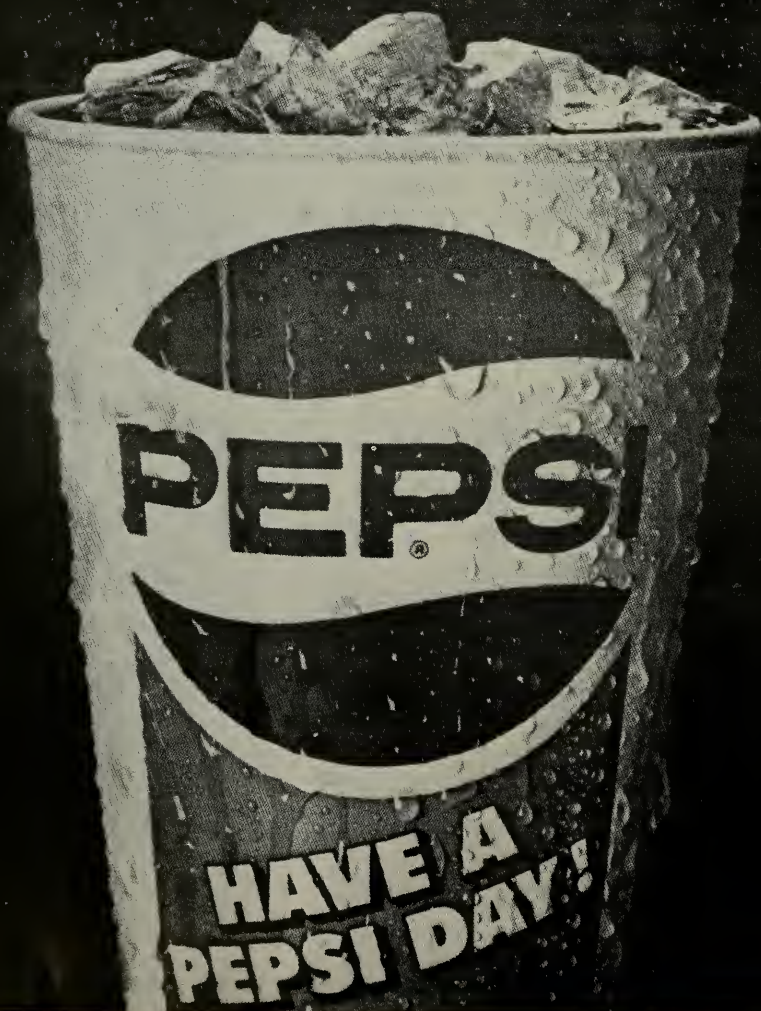
For all of us who are alive in this last quarter of the twentieth century — particularly those who came into the world in the early years of the century, "changing times" is a familiar theme. There had to be a lot of adjusting to do to keep up with the rapid changes that occurred in the past seven decades.

From horses and buggies as the chief means of transportation to space travel; from steam power as the main source of energy for moving machines to nuclear power gradually taking over; from mass production assembly lines to automation — the rapid transitions of the past seventy-five years called for many adjustments in the working life of America. These adjustments included the elimination of child labor, resulting in improved educational systems that benefit the poor as well as the rich. They included repeated shortening of the work week in order to keep everyone working as advancing technology eliminated jobs while increasing productivity.

In all these adjustments organized labor always played a leading role. There was stubborn resistance at first from businesses that were getting bigger and bigger and more powerful. But on this Labor Day, let us call on big business as well as on government to join with organized labor in planning the adjustment that is sorely needed not to meet the challenges of this age of computers and push buttons.



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JAMES P. LOUGHLIN

LABOR DAY MESSAGE

*By James P. Loughlin, Secretary-Treasurer
Massachusetts State Labor Council, AFL-CIO*

It was 96 years ago that a proposal was made in New York for an annual holiday dedicated to the working men and women of America — to recognize their industrial spirit and to honor them as the greatest the most vital force of every nation. This is the holiday we are celebrating this Monday, September 4, Labor Day of 1978.

We have come a long way in those ninety-six years — and our working men and women have made tremendous gains in security and dignity and freedom. Remember that in 1882, when Peter J. McGuire, who had founded the carpenters union, made his proposal, sweat shops were all over the place, child labor was accepted as a way of life, industrial safety was not considered the responsibility of the bosses, and most people worked from sunrise to sunset six days a week.

In 1882 we were near the peak of the so-called industrial revolution, which started in the eighteenth century and progressed rapidly throughout the nineteenth century when steam power, and later electric power, enabled enterprising nations like Britain, Germany, France and the United States to create wealth from mass production and international trade. Industrial expansion gave rise to the need for more and more workers in the large cities and it was inevitable that most of these workers would be exploited by those who owned the machines. It was also inevitable that exploited workers would eventually band together to protest against unfair and cruel treatment.

The contribution to progress made by American trade unions in the twentieth century was well expressed in 1952 by the late President Truman. "Their record," he said, "is a tribute to the American system of free collective bargaining, which responsible trade unionism has developed to replace the old law of the jungle in our industrial relations." And then he added: "The trade unions of America have made a great and growing contribution to our national life. They are playing a vital, constructive and responsible part in the growth of the American economy and in our great national effort to win peace and security for ourselves and all free people."

That is what I believe all working men and women of America should remember on this Labor Day of 1978. They will be called upon to play an increasingly active role in the years just ahead.



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LABOR DAY WEEKEND

1978

GEORGE MEANY

President, AFL-CIO

Since America last celebrated Labor Day, the American labor movement has been under concerted attack. Starting with the day President Carter's modest proposal to reform the nation's labor laws were introduced, we have been the target of a vicious, distorted and unfair barrage of propaganda.

Sponsored and paid for by the business community, this attack was spearheaded by a small band of United States Senators with close ties to some of the most extreme right-wing organizations in the nation. They pictured the trade union movement as something evil, run by evil people, for evil reasons and with evil results.

The truth, of course, is the exact opposite.

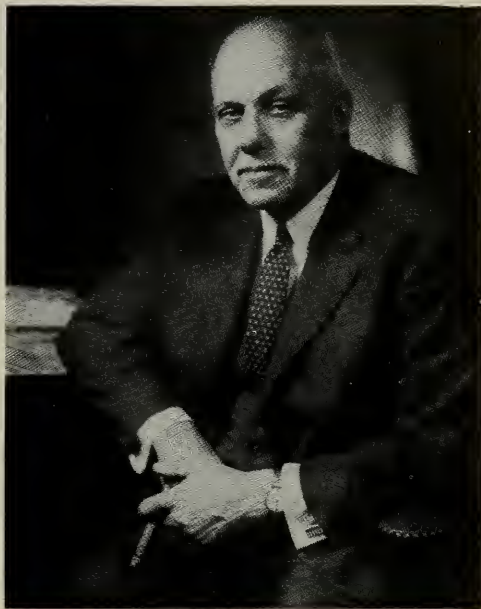
The American trade union movement — unlike any other labor movement in the world — is committed to working within the American political and economic system in order to achieve the social and economic justice promised by the Declaration of Independence and the Constitution.

The 14 million members of the unions of the AFL-CIO differ from other Americans only in one way — they carry a union card. They are active in their church, PTA, boys and girls clubs, scouts. They are involved in the broad range of activities in their communities. They worry about meeting their bills and caring for their children. They hope and dream about the future. They want a better world for their children and their grandchildren. And they work hard for that better world.

On this Labor Day — a holiday dedicated to the working people of this nation — it seems to me appropriate to take a closer look at the people who make up the American labor movement, their work and their unions.

And, it seems to me, just as proper to ask some questions about the role of the captains of American industry — those who pretend to be defenders of free enterprise — in seeking to destroy a labor movement that has always supported and promoted free enterprise.

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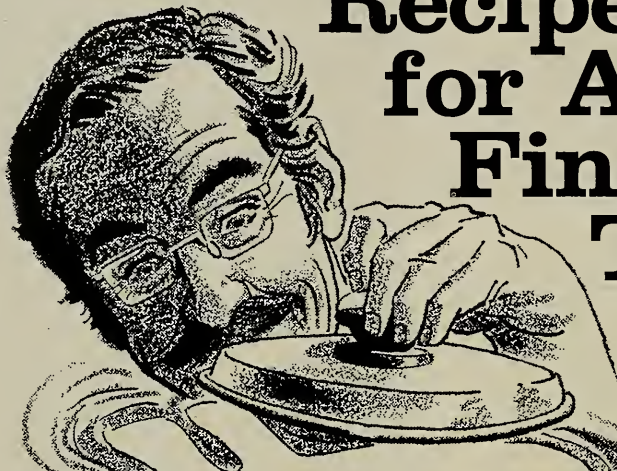


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Senator Edward M. Kennedy

EDWARD M. KENNEDY
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GEORGE MEANY

Why, for example, would American business want to weaken the strongest anti-communist workers movement in the world? Why, at the very same time, do they pursue cozy trade deals with communist dictators — the sworn enemies of capitalism and free enterprise?

Perhaps the answer goes back to the origins of the labor movement — to the desperate methods employers used to prevent workers from forming unions. Unions, those employers decided, constituted a direct threat to their power to make virtually unlimited profit through miserable wages, unsafe working conditions and the use of child labor in sweatshops.

Greed to make the last dollar of profit led those employers to use violence, the courts and blacklists as weapons against unionism. They sought to deny workers their First Amendment rights — to act together and speak freely to encourage others to join their cause. Those rights endangered their profits and they felt — and some still feel — money to be more important than rights.

Then, as now, unions of workers were viewed by many employers as “evil,” because they consider anything which reduces maximum profits to be “evil.” It is no coincidence that the propaganda used by employers in the 1900s to frustrate and thwart unions bears a remarkable resemblance to today’s propaganda. The lies told at the beginning of this century are still being repeated today. The propaganda is slicker but it is just as false.

In fact, the phrase popular with many editorial writers today — “that unions may have been necessary once, but have outlived their usefulness” — is neither new, nor more valid, than when it was first used in 1920 by an industrial kingpin dedicated to busting even the weak unions of that era.

The role of the labor movement, through the institution of collective bargaining, is to bring democracy to the workplace.

By its very nature, management of a business implies a certain amount of arbitrary control by the boss over the workers. Through collective bargaining, workers have a mechanism and an orderly procedure for placing well-defined limits on that arbitrary power. The result of collective bargaining is a legal and binding contract for a specific time period, setting the precise conditions under which workers will labor, for specific wages for a stipulated number of hours.

And it works. About 98 out of every 100 collective bargaining agreements are renegotiated without the loss of any worktime due to a strike or lockout. It is a record envied by most other major industrial nations. In fact, employers seek to avoid unionism by their employees, pay professional consultants for advice and are told: Give the workers the things they want; then they won’t want a union. Establish procedures for handling complaints,

improve wages and fringe benefits, make the workplace safer — that’s what the consultants advise.

Why then is it “wrong” for a union to seek these items in a legally-binding contract? Of course, the difference is the business consultants urge their clients only to “give” these to workers — not to agree, not to promise, not to make any pledges. “Give” today — and maybe take away next year.

The contract provides protection against “take aways.” That’s the difference — the total difference.

To the worker, it means security. To the American economic system, grievance procedures, seniority systems and spelled-out working conditions mean stability in the workforce, reduced tensions and disruptions caused by disgruntled employees and increased productivity.

And consider this: Health insurance, disability benefits, pensions and life insurance help prevent workers or their families from becoming “charity” or welfare cases and thus a drain on tax dollars. They help maintain the purchasing power of workers and their families, thus contributing to the economic health of the nation by buying the goods and services it produces.

And there are other examples: Improving occupational health and safety also improves productivity and keeps injured and sick workers from becoming wards of the state. Premium rates of pay for overtime encourages employers to hire additional workers — thus reducing unemployment — and frees those on the payroll from unwanted overtime so they can spend more time with their families.

Paid vacations have spawned a whole new industry in the United States — tourism, which provides hundreds of thousands of jobs. Non-discrimination in employment, which was a key clause in many union contracts long before there was a federal law, is not only morally right, it is economically sound as well.

Wage increases are vital to the economy because workers’ families are the Number One purchaser of the goods and services made in this country. Depressed wage levels would certainly cause a disastrous depression.

Without these gains that workers have won through collective bargaining, employers would have been able to shift the burden of their responsibility to government, resulting in an increase in taxes. And if the government failed to provide for these needs, there would be rampant employment, poverty and misery.

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GEORGE MEANY

What makes the American labor movement unique is that it has sought to keep responsibility for these matters largely within the free enterprise system, rather than shifting it totally to the government. Unlike many foreign countries, the American labor movement does not have its own political party and does not seek to control the government in order to legislate these programs.

Of course, government has a responsibility to make certain that employers who do not deal with unions do not totally escape their social responsibility.

That is why the American labor movement has lobbied for — and won — a minimum wage law that helps keep millions of non-union workers out of poverty — occupational safety and health legislation that seeks to make every workplace safe and healthful — unemployment insurance for workers who lose their jobs — worker's compensation for those who are injured on the job — anti-discrimination laws that apply to every workplace — Social Security and Medicare to help workers who have no pension or health benefits after they retire. Employers bear much of the responsibility for financing these programs, thus limiting the cost to taxpayers.

And all of these programs cover all workers, not just the union members.

It is when we lobby for these and other laws that the cry is sometimes heard — usually from those employers who want to avoid any responsibility for their employees — that labor should stick to “wages, hours and working conditions” and not get involved in politics.

That, of course, is nonsense. The labor movement's political activity is aimed at encouraging the greatest possible participation in elections. Democracy cannot succeed if only the rich and powerful have and use the vote.

And how do unions engage in politics? Well, union meetings are held in virtually every community in this country. There the records of the candidates are reviewed and a united position is decided by democratic vote. In fact, in order to endorse a candidate, a two-thirds majority is required to guard against “bossism”. And union members

always retain their individuals right to support the opposite position.

But union members know that when they speak together, their voice is loud enough to be heard. They also know that an uninformed vote is worse than no vote at all. They want to know how their Representatives and Senators actually vote on the issues — not just what they say they did. So unions regularly keep their members informed of congressional voting records, and the members make up their own minds on the candidates.

And what issues are important to workers and their unions? Good schools for their children, better transportation, clean air and water, protecting their jobs from unfair competition from foreign lands, getting full value in government services for their tax dollars. Every single one of these issues is decided by government. That means, since the needs and concerns of workers are going to be addressed by government, workers must play their proper role in selecting that government.

In sum, therefore, despite the propagandists' claims, America's trade union movement could only be considered “evil” if democracy itself is the considered “evil”. And that thought is abhorrent to the American Labor Movement.

There are more than 60 million Americans who are either active or retired members of unions, or spouses of union members, or children of union members.

Like all Americans, they enjoy this day as a day of leisure. But they do so with a special pride that their country not only sets aside a day in their honor, but has also given them the opportunity to improve their working and living conditions through the democratic process.

On behalf of these workers, I would like to wish all Americans a happy Labor Day.

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1978 LABOR DAY MESSAGE

by

LANE KIRKLAND

Secretary - Treasurer, AFL - CIO

On September 5, 1882 the first celebration of Labor Day took place in New York City, to honor those men and women who had fought against the exploitation of one segment of society by another.

On this Labor Day, that struggle has extended to new and broader fronts. One is now centered on the ever-increasing medical care costs that are hitting every American's pocketbook and health security.

In 1977, nearly 9 percent of the nation's total income, \$740. per man, woman and child, was spent on health care costs. If the present trend continues, medical costs will eat up 10 percent of the GNP in 1980 and the dollar expenditures will double by 1982.

Politicians who travel under the label of "conservative" are fond of saying that fundamental social problems cannot be solved by throwing dollars at the problems. They are right. America has been throwing dollars in enormous quantities at doctors, hospitals and insurance companies, but the people are not getting their money's worth. Money isn't everything, as those who have plenty like to tell those who have none, but it is a useful measure of how a crisis can grow more critical year by year without ever being resolved. At present there is no incentive and no will in the private sector to resolve it.

Discontent with the present health care system is, of course, not just its cost but its unevenness, unfairness and inefficiency. There is a concentration of health professionals and duplication of health facilities in the richest parts of the country, and scarcity and even absence in the poorest parts.

Increasingly, there is competition by doctors and hospitals to produce more services and more expensive services for those able to pay, while those who cannot pay get little service.

The fee-for-service system requires a physician to have a sick patient before he can have an income, and a surgeon to perform an operation before he can pay his bills. Thus, the emphasis is on treating the sick, rather than making and keeping patients healthy. The cost-plus system of reimbursement encourages a hospital to fill all the sickbeds it can and keep them filled, whether the patient actually belongs in the hospital or can best be treated there.

Labor's concern for this state of affairs goes back a long way. National health insurance has been on our agenda since early in the century. It was written into the original draft of the Social Security Act of 1935, but organized medicine succeeded in killing it and maintaining the status

quo. We did not then and do not believe now that the status quo in health care is acceptable.

We are not alone. Scores of organizations, representing millions of Americans, have joined together in a coalition — the Committee for National Health Insurance — to do something about it.

There is widespread agreement that reimbursing hospitals through budgeted prepayment (rather than cost-plus billing of patients), encouragement of prepaid Health Maintenance Organizations, and legislation to end abuse by doctors and hospitals of Medicaid and Medicare, would help control health care costs.

In addition, there is a consensus supporting more training of medical paraprofessionals to assist doctors, second opinions on the need for hospitalization and surgery, and community planning to meet health care needs more efficiently.

Recently, business and medical groups met on common ground with labor. Senator Edward M. Kennedy and the American Medical Association held a Conference on Positive Health Strategies in Washington — paving the way for new initiatives to concentrate on keeping people well.

As President Meany stated at that conference: "There are some very significant side benefits for the economy from eliminating some health factors that compound many lingering social problems in America."

Continued on Page 19

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The effect of workmen's compensation benefits on Social Security total disability benefits*

BERNARD COHEN

Editor's Note: Our readers should be aware that Mr. Cohen's article is based on his experience under the Massachusetts Worker's compensation law and that there may be some differences under the Texas act concerning the concepts of "total" and "partial" incapacity.

Prior to the 1965 Amendments to the Social Security Act the injured worker could obtain disability benefits under Social Security only if the worker had a mental or physical impairment which, it was anticipated, would continue for an indefinite period of time or result in death. As a consequence, very few industrially injured workers were eligible for disability benefits under Social Security. However, under the disability provisions of the Act, as amended in 1965, the injured worker would not be eligible for benefits under Social Security if the worker had a disability that was expected to last at least twelve months or to result in death. Consequently, many injured workers are now potentially eligible for total disability benefits under Social Security.

The purpose of the following is to answer just a few of the most common questions presented by injured workers who are receiving or who are eligible for both Workmen's Compensation and Social Security total disability benefits. However, the items are presented as general guides since each disability claim is evaluated on its specific merits.

Question: Can an injured worker receive both Workmen's Compensation and Social Security disability benefits?

Answer: Yes. However, see the following questions and answers.

Question: Prior to the Social Security Amendments of 1965 did the receipt of Workmen's Compensation benefits have any effect on Social Security disability benefits?

Answer: No. As a result of this, some in-

jured employees were receiving more in combined Workmen's Compensation benefits and Social Security disability benefits than their average weekly wage as of the date of the injury. NOTE: There was a brief period before the 1958 amendments in which offset was applied.

Question: What is the cutoff date for receiving both disability benefits under the Social Security Act and Workmen's Compensation benefits without having the receipt of Workmen's Compensation benefits reduce the amount the injured employee would receive in Social Security disability benefits?

Answer: If the injured worker's period of disability began on or before June 1, 1965, the receipt of Workmen's Compensation benefits is not cause for offset.

Question: Under the present law can an injured worker collect Social Security disability benefits and Workmen's Compensation benefits without one affecting the other?

Answer: Under the law the injured worker may collect both, but a worker and his family may not receive more in monthly benefits from both Social Security and Workmen's Compensation than generally (1) 80 percent of the worker's average monthly earnings (based on the five consecutive years after 1950 with the highest actual earnings), or (2) 80 percent of the worker's average current earnings based on the highest single year, including the year the worker became disabled and the five years prior thereto, whichever is the larger.

Question: Should an injured worker who is collecting Workmen's Compensation benefits always apply for Social Security disability benefits?

Answer: If an injured worker's disability is expected to last twelve months or more, or result in death, and he has worked long enough to get disability benefits, I suggest that the injured employee apply. An injured worker may receive a potentially significant monetary advantage.

Question: How long does a disabled



Bernard Cohen was educated at Boston University College of Business Administration, Princeton University, and Boston University School of Law; he received the Honorary Degree of Doctor of Jurisprudence from the New England School of Law. He is a member of the Massachusetts Bar, Federal Bar, and Bar of the Supreme Court of the United States. He has lectured to many labor groups on the subject of workmen's compensation and authored several booklets on the topic. Mr. Cohen is associated with the Law Offices of Bernard Cohen, Inc. of Brockton, Mass.

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The rising cost of medical care is an inflationary drain on the economy, as well as the personal budgets of Americans.

As Senator Kennedy stated recently "In spite of the fact that we are a rich society, there is a health care crisis in America. The affluence of some cannot obscure the plight of many others, especially the millions who are elderly or poor, who live a nightmare of fear of sickness and ill health, who cannot obtain the health care they need, who are unable to pay the bill because of the unacceptable financial burdens imposed by the present system."

We in the American labor movement agree with Senator Kennedy. The shrinking health dollar buys less and less effective health care, penalizing not only the elderly and the poor, but most Americans.

National health insurance can work. It has been proven. Our neighbors to the North, in Canada, have had such a system since 1968.

Prior to the enactment of a national health insurance program, 70 percent of Canada's population had some form of private insurance protection against the cost of necessary medical care. Today, the Canadian national health insurance plan provides full benefits for more than 99 percent of the population.

Opponents to the Canadian plan predicted a drop in the number of available doctors and their income. Neither happened. In fact, there are a greater number of students applying to medical school than ever before.

In addition, the Canadians have realized many cost savings. Physicians payments schedules increased 3.9 percent annually for 1970-1976, half the rate of increase for all items in the Canadian CPI. The reverse is true here in the United States, where physicians fees and other health costs have increased at more than twice the rate of inflation for all other items in the consumers' price index.

Cost savings are supplemented by another benefit: improved health. Statistics compiled by the United Nations and the World Health Organizations show that Canada leads the United States in key measurements of health: infant mortality and longevity.

If our neighbors to the North find that they are able to provide this basic human right — good health — why is it that the richest most technologically advanced country in the world cannot? Why is it that every industrialized country of the world, except the United States and South Africa, has a national health plan?

The labor movement welcomes Senator Kennedy's announcement that, in conjunction with the Committee for National Health Insurance, he will develop a comprehensive national health insurance bill and hold hearings on that legislation before the November election. We pledge our enthusiastic cooperation in the effort to bring this vital issue before the American people.

To the labor movement, the principles for genuine national health insurance remain: a comprehensive single standard of benefits; universal coverage; access to health care as a matter of right; incentives for reform of the delivery system; built-in quality controls; effective cost controls; minimum administrative overhead costs; equitable and progressive financing; and strong consumer representation.

No social issue has a higher priority to the labor movement than enactment of national health insurance. Without national health insurance, the American people will be forced to endure continued, inadequate, inappropriate and high-cost medical care.

Our goal this Labor Day is to make decent health care a right of all Americans, and we are going to keep at it until that task is done.

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The labor movement is not going to disappear or even retreat. We will be back on Capitol Hill as often as necessary, as long as it takes, to persuade the Congress to make it clear that the law must be fair and respected.

And in the meantime we will go about our business of organizing and representing and bring justice to workers. We will go on with the business of collective bargaining to secure for workers a fair share of the wealth created by their work

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—From a speech by AFL-CIO Sec.-Treas. Lane Kirkland to the convention of the Bakery, Confectionery and Tobacco Workers, Aug. 21, 1978.



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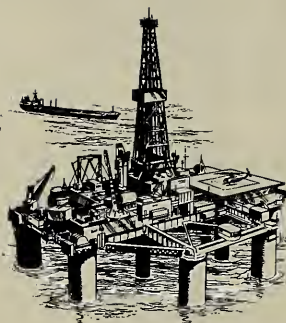
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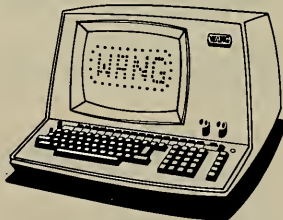
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worker have to wait before he can start collecting disability benefits under Social Security?

Answer: Generally, the injured worker will have to wait five full calendar months after the month this disability begins before he can start collecting Social Security disability benefits. However, there is no such waiting period if an earlier period ends and a subsequent period of disability is established within five years.

Question: Is the injured worker entitled to total disability benefits for any month during the five-month waiting period?

Answer: No.

Question: When will offset be imposed on the disability benefits an injured worker receives under Social Security?

Answer: Offset will be imposed only for those months after the month the Social Security Administration receives timely notice of the worker's Workmen's Compensation award.

Question: When should an injured worker who is collecting Workmen's Compensation benefits or is eligible for Workmen's Compensation benefits apply for Social Security benefits?

Answer: The Social Security Administration's position is that an injured worker should file for disability insurance benefits in every instance as soon as possible. Generally, the reason for this position is that (1) often the individual does not have sufficient information to know if offset will apply; (2) a loss of Social Security benefits to the worker may result from death or failure to effectively file at the latest possible date for full retroactivity, and (3) in some cases the date of disability onset for Social Security purposes may be established earlier than the industrial accident.

NOTE: If the injured worker is receiving Workmen's Compensation benefits and also believes he is eligible for disability benefits under Social Security, in my opinion, the injured worker may, if he gives timely notice of his entitlement to workmen's

The effect of workmen's compensation benefits on Social Security total disability benefits *

BERNARD COHEN

compensation benefits, incur a financial advantage by applying 17 months subsequent to the date of his injury for the reason that offset is not taken into consideration until the Social Security Administration receives timely notice of the injured worker's Workmen's Compensation award. Although the worker is not entitled to any Social Security benefits for the first five months of his disability, the worker may receive benefits retroactively for a period not more than twelve months from the time he applies.

Question: Are there any benefits under Workmen's Compensation that an injured employee would be entitled to and get credit for in computing offset on Social Security disability payments?

Answer: Yes. The injured worker's Social Security disability benefits will not be reduced by the following:

- a. Payments made directly to a dependent(s) rather than to the injured worker for the dependent.
- b. Legal, medical and related expenses incurred or to be incurred by he injured worker in connection with his Workmen's Compensation claim, if convincing evidence of such payments or expenses is submitted.

NOTE: Even though there is a diversity of opinion, in my judgment one could present a good argument for the premise that injured worker's Social Security disability benefits will not be reduced by the following: (1) In "unaccepted cases," (cases in which the insurer or self-insurer is not paying Workmen's Compensation benefits), the arrearage in compensation that was considered in evaluating the lump sum value of the case from the date of the injury to the date of the lump sum, (the date of the lump sum being the first time any payment or award has been made), and (2) In all cases benefits due the injured employee for disfigurement and functional loss.

Question: Assume that an injured worker has collected Workmen's Compensation

benefits as the result of an injury caused by a third party wrongdoer and that the worker is collecting disability benefits under Social Security, and assume further that the worker recovers in his action against the third party wrongdoer and repays the Workmen's Compensation carrier, can the Social Security Administration impose an offset on the benefits the injured worker is receiving?

Answer: No. Offset is not applicable in such a situation and the injured worker would be entitled to receive the amount that was offset in the past.

Question: If an injured worker is getting disability benefits under Social Security and believes he is also entitled to Workmen's Compensation benefits, and as a consequence files a claim for said benefits, is the injured worker entitled to disability benefits under Social Security without offset while the Workmen's Compensation claim is pending?

Answer: Yes. However offset may be applicable beginning with the date of the Workmen's Compensation award.

Question: If an injured worker is receiving disability benefits under Social Security and has also been awarded Workmen's Compensation benefits but no payment has been made to the injured worker on his Workmen's Compensation because the insurer or self-insurer has appealed, will the injured worker during the course of this appeal, receive his total disability benefits under Social Security without offset?

Answer: The injured worker may receive his full benefits from Social Security without offset until he actually receives his Workmen's Compensation benefits. However, when he receives his Workmen's Compensation benefits, the Social Security benefits will be offset retroactively to the date the Social Security Administration received timely notice of the injured worker's entitlement to Workmen's Compensation.

Question: Will an injured employee get credit for functional loss benefits that he is entitled to in computing offset on Social

Continued on Page 29

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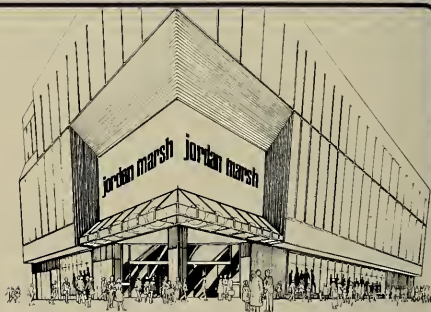
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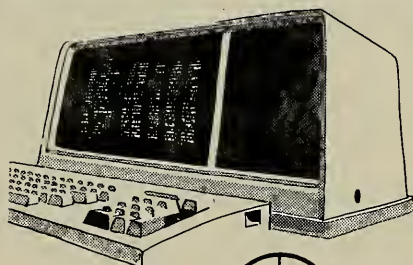
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The effect of workmen's compensation benefits on Social Security total disability benefits *

BERNARD COHEN

Security disability payments?

Answer: No. An injured employee does not get any credit in computing offset on future Social Security disability benefits for any amount paid to him for functional loss; therefore, future Social Security disability payments will be reduced by any amount paid an injured employee for functional loss under our Workmen's Compensation Act. In my opinion, the Social Security Administration's attitude is that no distinction is made in section 224 (b) of the Social Security Act which refers to "any periodic benefit under a Workmen's Compensation law or plan payable on other than a monthly basis, excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or substitute for, periodic payments."

NOTE: In my opinion, the Social Security Administration is incorrect in not giving an injured employee credit in computing offset for the amount recovered for functional loss. My reason is predicated on the following: (1) My interpretation of the definition of Workmen's Compensation for offset purposes under Social Security means payments for loss of earning capacity. In the Mass. Act specific compensation (functional loss and disfigurement) constitutes an additional loss over and above the loss of earning capacity. (Kaczmarczyk's Case 328 Mass. 9, 101 N.E. 2nd 353 (1951)); (2) Since Nov. 1, 1972 Workmen's Compensation benefits for functional loss and disfigurement (Sec. 36 of Ch. 152, G.L. of Mass.) are paid in a bulk lump sum by statute, and for many years prior thereto the periodic weekly payment was for practical purposes a fiction; (3) G.L. of Mass., Ch. 162, Sec. 51a, which went into effect Nov. 25, 1969, says that "in any claim in which no compensation has been paid prior to the final decision on such claim, said final decision shall take into consideration the compensation provided by statute on the date of the decision, rather than the date of the injury". As a conse-

quence, if a case is lump summed on or after November 1, 1972, and the date of injury was on or after November 25, 1969, and the Sec. 36 benefits are predicated upon the date on or after November 1, 1972, then it could be properly alleged that the bulk sum provision is applicable and therefore the employee should be given credit in computing offset for any amounts recovered for functional loss and disfigurement.

Question: In the event the injured employee lump sums his Workmen's Compensation case, what should the lump sum approval set forth for deductions?

- a. Attorney fees
- b. Outstanding medical expenses incurred to date (in unaccepted cases)
- d. Benefits due dependents (if paid directly to the dependents)
- e. The weekly rate upon which he lump sum payment is based, and the number of weeks.

NOTE: Even though there is a diversity of opinion, in my judgment if it is an "unaccepted case," (one in which the insurer or self-insurer refuses to voluntarily pay Workmen's Compensation benefits), the lump sum approval should also set forth the arrearage in compensation from the date of the injury to the date of the lump sum that was considered in evaluating the lump sum value of the case, and in all cases the amount due the injured employee for disfigurement and functional loss (setting forth a separate amount for each).

Question: Will an injured employee get credit for the amount he has to pay for either a veteran's lien or a welfare lien in computing offset on Social Security disability benefits?

Answer: No. An injured employee does not get any credit in computing offset on future Social Security disability benefits for any amount that has been deducted and paid to the Veteran's Services for a veteran's lien or to Public Welfare for a welfare lien. Therefore, future Social Security disability payments will be reduced by the

amount paid on said lien.

Question: Does the age of the injured worker have any effect upon the offset of disability insurance benefits due to the receipt of Workmen's Compensation?

Answer: Offset does not apply in or after the month the worker becomes age 62.

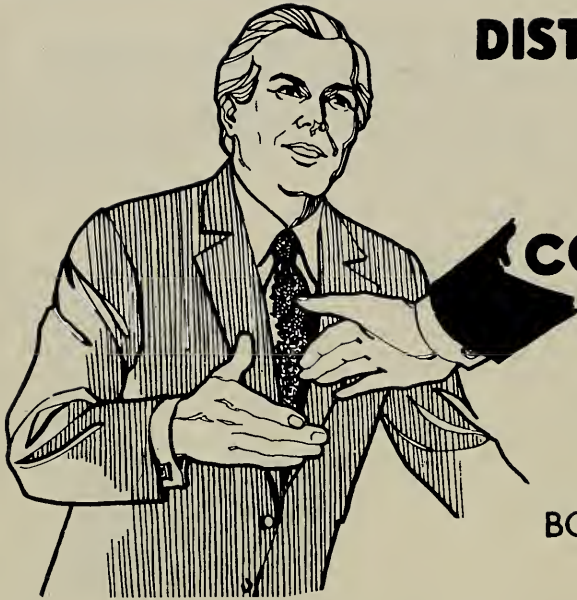
Question: If it has been determined that an injured employee who is collecting Workmen's Compensation is also entitled to disability benefits under Social Security and the worker has dependents, what should he do?

Answer: In my opinion, an effort should be made to have the Workmen's Compensation dependency benefits paid direct to the spouse for the reason that this may increase the injured worker's Social Security benefits. The injured worker is entitled to credit in computing offset on future Social Security disability benefits for any Workmen's Compensation benefits that are paid direct to a spouse for her dependency or for the dependency of the minor children. (In Massachusetts dependency benefits are \$7 [sic] dollars a week for a dependent spouse and each dependant child).

Hopefully, the above information will be of assistance to those attorneys who practice before the Industrial Accident Board so that they may obtain for the injured employees all the money properly due them, and as a consequence, afford the injured employees the opportunity to live as decent, respectable people.

The above conclusions were reached from an evaluation of the best information presently available, to wit: The Social Security Act as amended, the report of the Social Security Committee of the Massachusetts Industrial Accident Board, which committee met with regional representatives from the Bureau of Disability Insurance Social Security Administration, and discussions with a representative from the Bureau of Disability Insurance, Boston, Mass. Regional Office and others. However, because of the lack of judicial interpretation with regard to many of the issues involved, others may fairly reach conclusions which differ from mine.

End



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THE INJURED WORKER

And The Law

by Bernard Cohen, Esq.

Can Cancer Be Work-Related

The law is clear. Cancer, heart disease, lung disease, cerebals, mental illness are compensable if initiated, aggravated or accelerated by exposure, exertion or emotional stress and strain resulting from work. Further there is no question that the aggravation of a pre-existing condition is compensable. Hopefully the following will be of some assistance to injured employees and their dependents.

Q. The employee, presently aged 62, has worked as a welder for approximately 35 years. His work exposed him to asbestos. He carried a blanket of asbestos to protect structures adjacent to the part that he was welding and many times he would tear away asbestos insulation to get at pipes that leaked in order to reweld them. On occasions he worked in compartments where pipecoverers were working. The air was visibly dusty from the asbestos material that they cut and put in place. He started smoking at the age of 17 and continued smoking until August of 1973. In August of 1973 as a result of a routine chest x-ray it was ascertained that he had mesothelioma (cancer). At this time the employee is disabled and unable to work. Could this man's disability be work-related and therefore compensable?

A. Yes. There is authority to the effect that asbestos causes a form of cancer known as mesothelioma. There is further authority to the effect that people who smoke are more likely to be affected by this illness than non-smokers. In my opinion this man would have a definite potential of a workman's compensation case and the fact that he smokes simply means that he has a greater propensity for coming down with this illness and should not affect his case.

Q. An employee worked as a reactor cleaner, a job which exposed him to vinyl chloride, for about 5 years approximately 15 years ago. Subsequent to that he had no exposure to vinyl chloride. He recently died of angio sarcoma (cancer). Is there any chance that his death was work-related and that his family would be entitled to workman's compensation benefits?

A. Yes. There is authority which indicates that when workers are exposed to vinyl chloride they may have a greater likelihood of becoming ill with cancer. There is also authority to the effect that cancer resulting from vinyl chloride like cancer resulting from asbestos might not manifest itself for many years after exposure.

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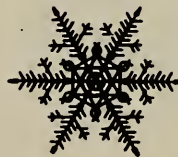
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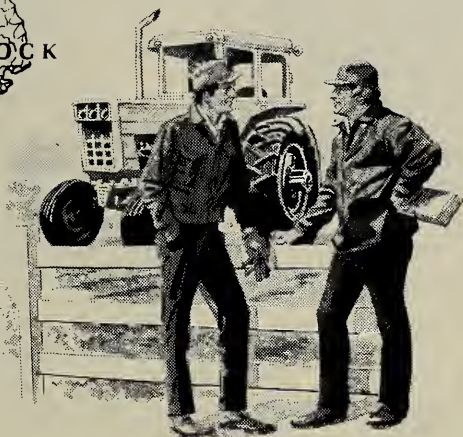


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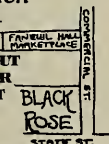
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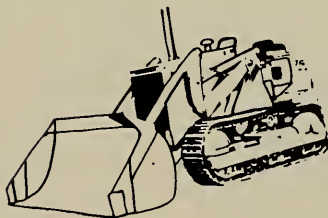
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CAN CANCER BE WORK - RELATED

Q. A nurse worked in an operating room for about 15 years as a nurse anesthetist where she was exposed to anesthetic gases which leaked from the operating room equipment. She developed leukemia and is presently disabled. Is there any likelihood that this disability may be work-related?

A. Yes. There have been studies to the effect that operating room employees exposed to certain toxic substances may develop leukemia more frequently than medical personnel who are not exposed to certain anesthetics.

Q. The employee, a heavy cigarette smoker, worked for many years as a roofer with hot pitch and asphalt. He developed cancer of the throat and larynx and as a consequence was disabled. Should he make an effort to collect workmen's compensation?

A. Yes. Roofers working with hot pitch and asphalt are exposed to benzpyrene or BaP. There is authority to the effect that workers exposed to this toxic substance may be more likely to die of cancer, especially of the lungs, larynx and throat. It is further my opinion that the heavy cigarette smoker, once again, may have a greater propensity for becoming ill with this horrible illness.

Q. The employee suffered a coronary thrombosis as a result of lifting a heavy package for the employer. The employee subsequently died of cancer. A physician testified that the cause of death was carcinoma (cancer) of the bladder and that the carcinoma would be fatal in any event, but the time interval between the diagnosis was made of the employee's chest complaint and the time of his death was an unusually short time for that type of cancer to terminate fatally. It was the doctor's opinion that the employee's semi-invalid condition (due to the thrombosis) lowered his resistance so that death occurred (due to cancer) before it otherwise would have. Can this deceased employee's dependents collect benefits under the Workmen's Compensation Act?

A. Yes. Murphy's Case 328 Mass. 301 N.E. 2nd 267 (1952)

Q. The employee injured his right buttock in a fall while unloading a truck for his employer. The employee continued working, and several months later he injured his right groin when lifting a box from a truck. He underwent an operation for inguinal hernia. The employee returned to work about two months after the operation, but he quit work about two months later due to excessive pain in his groin. A medical examination revealed carcinoma of the prostate and seminal vesicles with metastasis to the bones. It was the opinion of the doctor that the injury to his groin, with the subsequent operation, accelerated the course of his neoplastic disease (cancer). Is this employee intitled to compensation?

A. Yes. Sullivan's Case 345 Mass. 762,186 N.E. 2nd 601 (1962).

There are many individuals injured during the course of their employment who are not aware of the fact that they have a compensable claim or are entitled to more or greater benefits. Unions, law schools and lawyers *must* cooperate in an effort to educate employees as to every benefit due them. It is the sincere desire of the author that this article will help in part to effectuate the above goal.

End

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4½ Million Have Two Jobs

More than 4.5 million persons are "moonlighting" by working a second job, according to the American Council of Life Insurance. Most are married men, although more than 1 million are women.

Citing Labor Department statistics, the Council said the typical double job worker is a white male between 25 and 34 years of age and in a professional field such as teaching, engineering or accounting.

Most "moonlighting" jobs are part-time affairs, the Council notes, and generally do not provide employee benefits such as group life and health insurance, sick pay and disability plans. For those benefits, look to your regular job, says the Council, and for details of your coverage ask your personnel office or union representative.

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Green Thumb applies only to cities and towns whose population is less than 50,000. As such it is a very welcome economic stimulant in many of our rural communities. Begun in 1965 in four states, the program has now expanded to include 13,000 people in 40 states. We are extremely pleased to report the inauguration of Green Thumb efforts in several Massachusetts counties - Worcester, Hampden, Franklin, and Berkshire. In addition, the program is expanding operations to Middlesex, Norfolk, Bristol, and Plymouth counties.

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So, get over the hang-up. If labor's legislative goals are to make it through Congress, they're going to need a show of support. And that means letters and postcards from working people. You can bet conservatives are peppering congressional offices with notes opposing labor programs.

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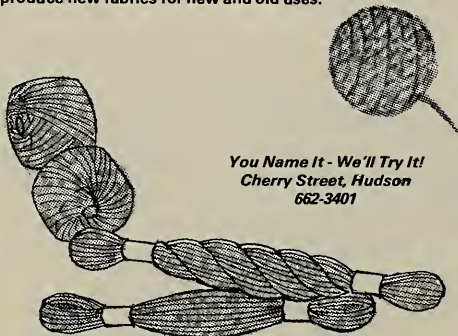
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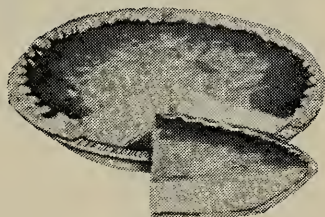
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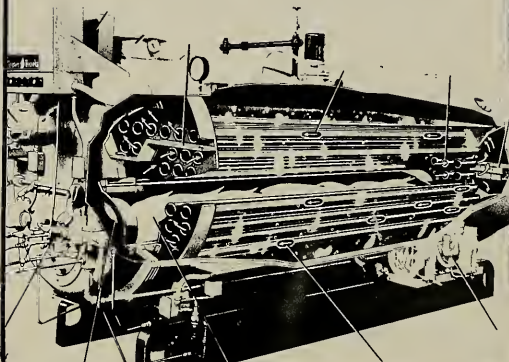
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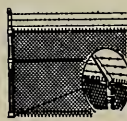
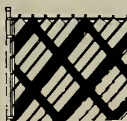


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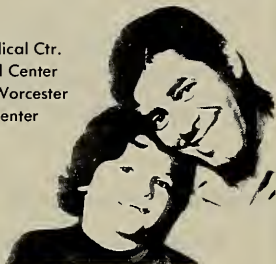
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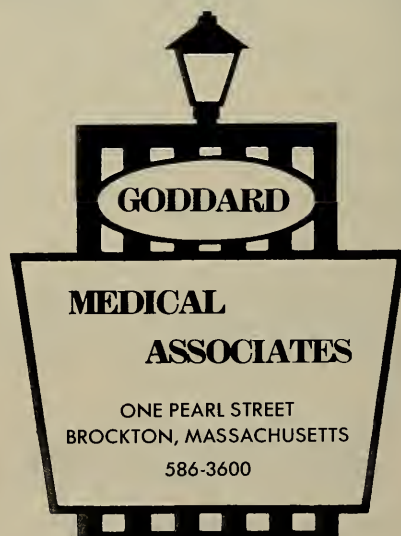
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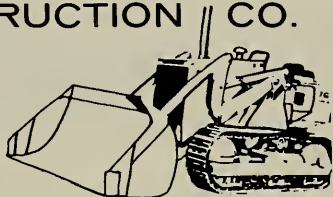
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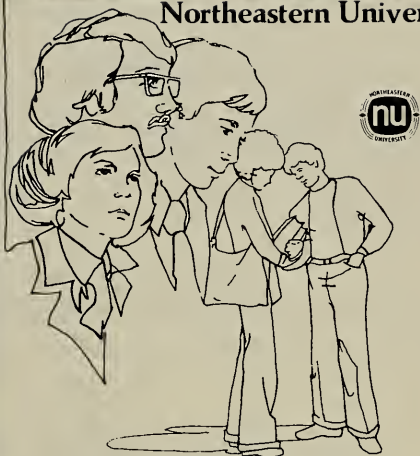
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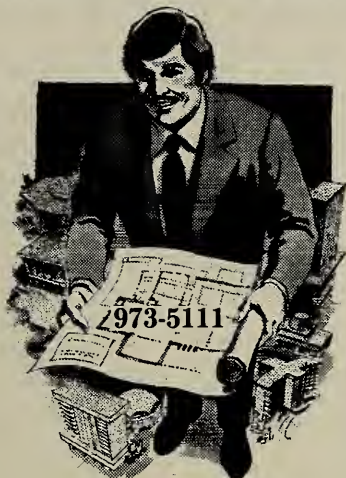
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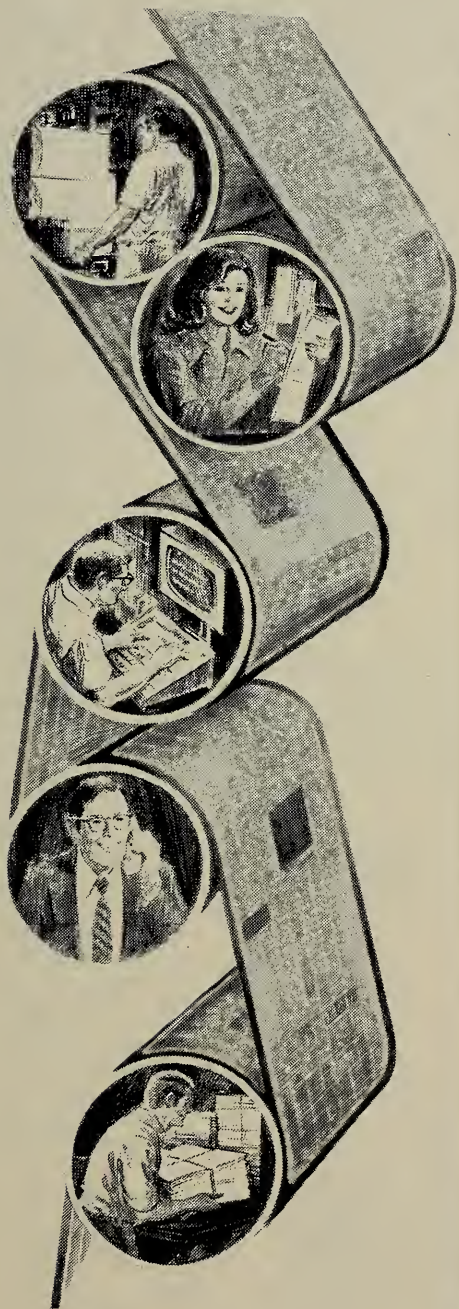
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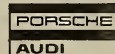
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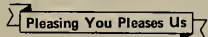
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In the shadow of Faneuil Hall

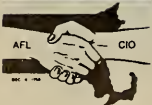
which was deeded to the town of Boston by Peter Faneuil in 1742 for use as the
Town Hall, affectionately called the "Cradle of Liberty"

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